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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,500	04/11/2006	Xing Zhou	SC11.PAU.01.US	3932
23386	7590	07/22/2009		
Myers Andras Sherman LLP 19900 MacArthur Blvd. Suite 1150 Irvine, CA 92612				
EXAMINER				
EASTWOOD, DAVID C				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
07/22/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/575,500

Applicant(s)

ZHOU ET AL.

Examiner

DAVID EASTWOOD

Art Unit

3731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731

Continuation of 3. NOTE: The amendment to claim 1 adds, for example, the limitation "wherein said slots are shaped in the open end of the specimen pouch by a thermoplastic jointing of the flexible wall" this and other changes raise new issues and change the scope of the claim requiring further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because:

With regard to claims 15 and 19 and those dependent there on applicant states that the Spector reference is non analogous art specifically citing the limitation "can receive the biological specimen therein". However, it has been held that the determination that a reference is from a non analogous art is twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174. In this case, the reference is reasonably pertinent to the particular problem, namely creating a closure with a smaller open diameter by creating serration along the bags perimeter allowing the bag to close with a smaller diameter opening (applicants remarks received 7/1/2009 page 17 paragraph 3), with which the inventor was involved.

Applicant states that the noose and string in the Conlon reference is unable to open the bag. Examiner respectfully disagrees, when spring arms (47) are in a closed bag state wire (95) and noose (97) can be held in a cinched state release of tension on wire (95) created by contracted spring arms (47) effectively opens the bag. Thus wire (95) and noose (97) are effective to open the specimen retrieval bag. Applicant states that the Conlon reference does not disclose a channel for which the string can pass through. Examiner respectfully disagrees, the wire (95) resides in channel (78) above spring arms (47) (Fig. 2 and Fig. 8)

With regards to claims 15 and 19 and those dependent thereon applicant states the Cope reference and Avalent reference do not disclose a string material which returns to an open state based on body temperature or a shape memory material. The Examiner respectfully disagrees the nitinol material disclosed by Avalent and Cope is old and well known in the art and is known for use as a shape memory alloy. Further more Cope discloses that the device is above transformation temperature (open state) when in OPERATING CONDITION (C 2 L 61). The examiner is interpreting this operating condition as being in vivo at body temperature approx. 98.6 deg. Fahrenheit while room temperature is well below this thus capable of being below the transformation temperature. In light of this interpretation Cope discloses a basket which opens upon being exposed to body temperature.